

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

TAHEEN HAYES,

PLAINTIFF

- AGAINST -

TIMOTHY DANKIE, JASON MEIER, GREGORY LANGTRY,
STEPHEN BENCE, EDWARD COON, KRISTOPHER HOFFMAN,
JAMES IARZESSO, RAYMOND SHANLEY, AND DANIEL
MARTUSCELLO1:16-CV-1368
(TJM/CFH)

DEFENDANTS

PLAINTIFF'S OBJECTIONS TO CHRISTIAN F.
HUMMEL U.S. MAGISTRATE JUDGE, REPORT-RECOMMENDATION
AND ORDER TO DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT.

PLAINTIFF OBJECT TO THE DISMISSAL WITH PREJUDICE
TO THE FOLLOWING CLAIMS

- (1) INsofar AS IT SEEKS DISMISSAL FOR PLAINTIFF'S TO
EXHAUST HIS FIRST AMENDMENT RETALIATION CLAIMS, EIGHTH
AMENDMENT EXCESSIVE FORCE CLAIMS, AND SUPERVISORY
LIABILITY CLAIMS,
- (2) INsofar AS IT SEEKS DISMISSAL OF PLAINTIFF'S EIGHTH
AMENDMENT SEXUAL ASSAULT CLAIM AGAINST C.O. DANKIE
- (3) FIRST AMENDMENT RETALIATION CLAIMS AGAINST C.O. HOFFMAN,
Supt. MARTUSCELLO, AND O.R.C. IARZESSO
- (4) EIGHTH AMENDMENT EXCESSIVE FORCE CLAIMS AGAINST C.O.
BENCE AND C.O. COON
- (5) EIGHTH AMENDMENT SEXUAL ASSAULT CLAIM AGAINST C.O. DANKIE
- (6) SUPERVISORY LIABILITY CLAIM AGAINST DSS SHANLEY.

EXHAUSTION

PLAINTIFF MAINTAINS THAT HIS ADMINISTRATIVE REMEDIES WAS UN-AVAILABLE TO HIM.

JUDGE HUMMEL CLEARLY POINTS OUT IN HIS REPORT (P. 20) THAT THIS COURT EXCUSED THE PLAINTIFF'S FAILURE TO EXHAUST HIS ADMINISTRATIVE REMEDIES IN HIGH V. SWITZ NO. 9:17-CV-1067 (LEW/DJS), 2018 WL 3736794, AT *5 (N.D.N.Y. July 19 2018), REPORT-RECOMMENDATION ADOPTED BY 2018 WL 3730175 (N.D.N.Y. AUG 6, 2018) WHEN C.O.R.C. REFUSE TO FOLLOW ITS OWN RULES AND REGULATIONS TO RENDER A DECISION ON PRISONER'S GRIEVANCE'S NOT JUST DURING THE THIRTY DAY ~~PERIOD~~ TIME LIMIT BUT FOR A PERIOD OF NUMEROUS MONTHS THEREAFTER.

AS IN HIGH V. SWITZ, PLAINTIFF DID WRITE TO C.O.R.C. SEE EXHIBIT A. DEF # 0714 AND ATTACH LETTER DATED NOV. 16. 2016. FROM INMATE GRIEVANCE PROGRAM DIRECTOR KAREN BELLAMY.

BOTH EXHIBITS CLEARLY SHOWS THAT PLAINTIFF GRIEVANCE'S WAS NOT ONLY ANSWERED WITHIN THE 30 DAYS TIME-LIMIT, BUT ALSO NOT AFTER THE 45 DAYS IN WHICH THE D.O.C.'S. GRIEVANCE DIRECTIVE TELLS PRISONERS TO CONTACT THEM ADDITIONAL TO ADD TO THE CONFUSION, ON SEPTEMBER 22. 2016, PLAINTIFF WAS TOLD TO ADDRESS ANY INQUIRIES ABOUT A C.O.R.C. DECISION OR DISPOSITION TO C.O.R.C. ~~FORWARD~~. SEE ~~THE~~ PEDERSON DEC. EXHIBIT A. P-DEF 0755 THEN WHEN PLAINTIFF WRITES TO C.O.R.C., PLAINTIFF IS TOLD TO WRITE DIRECTLY TO I67 SUPERVISOR AT COXSACKIE CORR. FAC.

SECOND, JUDGE HUMMEL RULE THAT PLAINTIFF'S ADMINISTRATIVE REMEDIES WAS AVAILABLE EVEN AFTER PLAINTIFF POINTS TO ALL THE EVIDENCE IN THE RECORD OF MISCONDUCT BY THE DEFENDANTS TO THWARTED HIS ATTEMPTS TO FILE GRIEVANCES.

PLAINTIFF PROVIDED EVIDENCE BY FOWZ J.G.Z.C. REPRESENTATIVES THAT DEFENDANT JARRISSO STATED HE THREW PLAINTIFF BRIEVANCE AWAY SEE PEDERSON DEC. EXHIBIT A. DEF. PP. 0760, 0753 AND HAYE DEC. 47-49.

FOR THE FOLLOWING REASON, PLAINTIFF REQUEST THIS COURT TO EXCUSE HIS FAILURE TO EXHAUST HIS ADMINISTRATIVE REMEDIES DUE TO THE "UN-AVAILABILITY"

SEXUAL ASSAULT CLAIMS

PLAINTIFF DISAGREE AND OBJECT TO JUDGE HUMMEL DISMISSAL OF HIS SEXUAL ASSAULT CLAIM AGAINST C.O. DANLIE.

PLAINTIFF MAINTAIN THAT DEFENDANT DANLIE PRESSING UP ON PLAINTIFF WITH HIS GENITALS WHILE PAT-FRISKING HIM IN A SEXUAL MANNER IS A VIOLATION TO PLAINTIFF EIGHTH AMENDMENT CONSTITUTION RIGHT. NO WHERE IN D.O.C.'S DIRECTIVE FOR SEARCHING PRISONERS SHALL AN OFFICER PLACE HIS GENITALS ON A PRISONER NOR SHALL AN OFFICER DIG HIS HANDS OR FINGERS IN-BETWEEN A PRISONER BUTT-CRACK & THE MORE FACT THAT THE DEFENDANT DANLIE MADE SEXUAL COMMENTS AND TALKS AFTER THE SEXUAL ASSAULT SHOULD DETERMINE HIS INTENT.

FOR THE FOLLOWING REASON, PLAINTIFF REQUEST THAT DEFENDANT SHOULD BE DENIED ON PLAINTIFF EIGHTH AMENDMENT SEXUAL ASSAULT CLAIM.

EXCESSIVE FORCE

PLAINTIFF OBJECT TO JUDGE HUMMEL DISMISSAL OF HIS EIGHTH AMENDMENT EXCESSIVE FORCE CLAIM

DEFENDANTS MEIER AND LANTRY CONCEDED TO THE EXCESSIVE FORCE ON PLAINTIFF WHICH CAUSE INJURY, HOWEVER DEFENDANTS BENKE AND COON DENY THEIR INVOLVEMENT TOO. BECAUSE PLAINTIFF WAS LUCKY TO NOT SUFFER MORE INJURY OR SIMPLY INJURED TO HIS WRIST.

PLAINTIFF REQUESTED IN HIS OPPOSITION TO DEFENDANTS PARTIAL SUMMARY JUDGEMENT FOR JUDGE HUMMEL TO LOOK AT THE TOTALITY OF HIS ASSAULT BY DEFENDANTS MEIER, LANTRY, COON AND BENKE. JUDGE HUMMEL STATED THAT ~~FROM~~ PLAINTIFF HAS FAILED TO PRE-OFFER EVIDENCE ASIDE FROM HIS CONCLUSORY ALLEGATIONS, THAT CONTRADICTS DEFENDANTS ACCOUNT OF EVENTS.

PLAINTIFF DID OFFER EVIDENCE, WHICH IS HIS DECLARATION AS WELL AS DEFENDANTS BENKE AND COON CONDUCTING INTERROGATORIES AND ADMISSIONS SEE ID AS WELL AS DEFENDANTS MEIER AND LANTRY CONCESSION AND NON-DENIAL FOR SUMMARY JUDGEMENT. ADDITIONALLY PLAINTIFF DISPOSITION.

FOR THE FOLLOWING REASON, PLAINTIFF REQUEST THAT DEFENDANT SHOULD BE DENIED ON PLAINTIFF EIGHTH AMENDMENT EXCESSIVE FORCE CLAIM.

FIRST AMENDMENT RETALIATION CLAIM.

1. C.O. HOFFMAN

FIRST JUDGE HUMMEL DECLINES TO CONCLUDE THAT C.O. HOFFMAN'S MAY 15 2016 MISBEHAVIOR REPORT WAS AN ADVERSE ACTION, BECAUSE IT WAS ONLY ONE DAY.

PLAINTIFF DISAGREE THAT HE WAS ONLY CONFINED FOR ONE-DAY ~~AND~~. THE RECORD IS CLEAR THE THE MISBEHAVIOR REPORT WAS EXPUNGED FOR UNKNOWN REASON BUT NOT ON WHAT DATE ~~AND~~ PLAINTIFF WAS STILL CONFINED AS A RESULT OF THE MAY 15 2016 M.B.R. AND DON'T KNOW WHEN IT WAS EXPUNGED ~~AND~~ SO PLAINTIFF WAS ALWAYS CONFINED ~~AND~~ SINCE MAY 15 2016 DESPITE THE OTHER M.B.R.

SECOND, I MAINTAIN THAT PLAINTIFF FIT THE (iv) FACTORS OF DETERMINING WHETHER A CAUSAL CONNECTION EXISTS BETWEEN THE PLAINTIFF'S PROTECTED ACTIVITY AND PRISON OFFICIALS ACTIONS.

PLAINTIFF POINTS OUT IN HIS PL. OPP 7-10, THAT CIRCUMSTANTIAL EVIDENCE EXISTS WHERE DEFENDANT DANKIE INFORMED OF OFFICERS AND INMATES HARASSED PLAINTIFF ON SEVERAL OCCASIONS MAINLY ON MAY 14 & 15 THAT PLAINTIFF WAS A SWITCH FOR REPORTING THE SEXUAL ASSAULT. AGAIN ON MAY 12, PLAINTIFF SPOKE TO THE OFFICE OF SPECIAL INVESTIGATION ABOUT THE SEXUAL ASSAULT, ON MAY 14 & 15 DEFENDANT DANKIE HARASSED PLAINTIFF FOR REPORTING THE SEXUAL ASSAULT AND ON MAY 16TH 2016 PLAINTIFF IS ISSUED A FALSE MBR ABOUT THE SAME PREA ALLEGATION. THEN PLAINTIFF NEVER GOES TO A DISCIPLINARY HEARING AND THE MAY 16TH 2016 MBR IS EXPUNGED FOR UNKNOWN REASON AND ON A UNKNOWN DATE.

FURTHER ON TWO DIFFERENT OCCASIONS, DEFENDANT HOFFMAN MADE COMMENTS THAT YOU MESSED WITH ONE OF THE C.O'S YOU GOT TO DEAL WITH ALL OF US AND THAT PLAINTIFF SHALL STOP COMPLAINING THE MISBEHAVIOR REPORT DON'T EXIST.

FOR THESE FOLLOWING

2. SWPT. MARINSCILLO

PLAINTIFF OBJECT TO SWDGE HUMMEL DISMISSAL OF FIRST AMENDMENT RETALIATION CLAIM AGAINST SWPT. MARINSCILLO AND ASK THIS COURT TO REVIEW THE CREDIBILITY AND SPECIFICITY OF SWPT. MARINSCILLO STATEMENTS AND INTENT.

3. O.Z.C. IARUSSO

JUDGE HUMMEL I BELIEVE OVER-LOOKED PLAINTIFF WHOLE ARGUMENT AND FAILED TO REVIEW THE WHOLE RECORD ON THIS CHAIN.

PLAINTIFF POINTED OUT IN HIS Pl. OPP. 11-12 THAT DEFENDANT IARUSSO IN THE POSITION OF ACTING INMATE GRIEVANCE PROGRAM SUPERVISOR TRIED TO DISCOURAGE PLAINTIFF TO FILE GRIEVANCES AND DIS-CARDED PLAINTIFF GRIEVANCES ON JULY 7, 2016.

DEFENDANT IARUSSO CONFESSED AND BRAGGED ABOUT DIS-CARDED PLAINTIFF GRIEVANCES ON JULY 12, 2016.

JUDGE HUMMEL POINT OUT DEFENDANT POSITION THAT DEFENDANT IARUSSO ON JULY 12, 2016 AS A IGP STAFF REPRESENTATIVE WAS NOT HIS RESPONSIBILITY TO FILE PLAINTIFF GRIEVANCES, THIS IS TRUE HOWEVER PLAINTIFF SUBMITTED THESE GRIEVANCES ON JUNE 11 & 15TH 2016 WHEN DEFENDANT IARUSSO WAS ACTING IGP'S AND IT WAS HIS RESPONSIBLE.

ADDITIONALLY, JUDGE HUMMEL ALSO GIVES CREDIT TO THAT FACT THAT PLAINTIFF GRIEVANCES THAT WAS ADMITTED BY DEFENDANT IARUSSO GRIEVANCES WAS LATERED FILED. PLAINTIFF ASK THIS COURT TO EXAMINING THAT POSITION. JUST BECAUSE I HAD A SPREAD COPY AND HAD TO COMPLAIN TO THE INMATE GRIEVANCE PROGRAM SUPERVISOR AND D.O.C.'S COMMISSIONER TO MAKE SURE MY GRIEVANCES WAS FILED DOESN'T PROVE DEFENDANT IARUSSO INTENTIONALLY DIS-CARDING OF MY GRIEVANCES. SEE ID

FOR THE FOLLOWING REASONS, I ASK THAT DEFENDANT'S PARTIAL MOTION FOR SUMMARY JUDGEMENT FOR FIRST AMENDMENT PETITION CHAIN IS DENIED.

SUPERVISORY LIABILITY

PLAINTIFF DO NOT WANT TO BURDEN THIS COURT ~~WITH~~ WITH A LEGAL REACH, HOWEVER PLAINTIFF POINT TO PEDERSON DEC. EXHIBIT A. DEF# 0734-0735, WHERE PLAINTIFF MAKE THE GRIEVANCE PROGRAM AWARE OF D.S.S. SHAWLEY FAILURE TO PROTECT CHAIM AND AGAIN IN A REFERENCE TO THIS SAME GRIEVANCE IN PEDERSON DEC. EXHIBIT A. DEF# 0778-0781.

FOR THE FOLLOWING REASON,
PLAINTIFF REQUEST THAT THE REPORT - RECOMMENDATION - ORDER FROM SWDBE HUMMER IS REVERSE.

DATED: DEC. 16. 2018

Respectfully Submitted.
Lulu Hayes.

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CC: FILE
HELENA O. PEDERSON, AAG.